

1                                   BEFORE THE  
2                                   POLLUTION CONTROL HEARINGS BOARD  
                                  STATE OF WASHINGTON

3	IN THE MATTER OF	)	
	JAMES P. COLBECK,	)	
4	d.b.a. Colbeck & Company,	)	
		)	
5	Appellant,	)	PCEB No. 77-112
		)	
6	v.	)	FINAL FINDINGS OF FACT,
		)	CONCLUSIONS OF LAW
7	PUGET SOUND AIR POLLUTION	)	AND ORDER
	CONTROL AGENCY,	)	
8		)	
	Respondent.	)	
9		)	

10           This matter, the appeal of a \$250 civil penalty for the alleged  
11 violation of Section 9.04 of respondent's Regulation I, came before the  
12 Pollution Control Hearings Board, Dave J. Mooney and Chris Smith, at a  
13 formal hearing in Seattle, Washington on January 16, 1978.

14           Appellant appeared pro se; respondent appeared by and through its  
15 attorney, Keith D. McGoffin. David Akana presided.

16           Having heard the testimony, having examined the exhibits, and having  
17 considered the contentions of the parties, the Pollution Control Hearings  
18 Board makes these

FINDINGS OF FACT

I

Pursuant to RCW 43.21B.260, respondent has filed with the Board a certified copy of its Regulation I and amendments thereto which are noticed.

II

Appellant is the sole proprietor of a business which performs, among other things, abrasive blasting for architectural finishes. Appellant was so engaged on June 20, 1977 on the 4th and Battery Building in Seattle.

III

On this occasion, appellant was abrasive-blasting a column near the top of a 12-story building. Although wind conditions appeared to be satisfactory in the morning, a "freakish" wind arose later in the afternoon which carried the abrasive materials away from the building and onto property of others at 2400 - 4th Avenue. A complaint thereof was made to respondent at about 3:20 p.m. Appellant also discovered, through periodical checks, that his abrasive materials were being carried away by a brisk wind and promptly stopped the operation.

IV

On June 21, 1977, respondent's inspector visited the worksite and adjacent properties, and observed nickel slag abrasive materials on complainant's windowsills, building, and upon nearby cars. Similar materials were found on appellant's worksite. For the foregoing observation, appellant was issued a notice of violation from which followed a civil penalty in the amount of \$250, and the instant appeal.

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

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Appellant has had previous notices of violation on December 28, 1971 and September 13, 1972 for which no civil penalties were assessed. Appellant has sought to comply with the applicable regulations and has formulated a program, including weather report checks, material selection, and job selection, which have been successful until the instant occurrence.

VI

Any Conclusion of Law hereinafter stated which may be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Board comes to these

CONCLUSIONS OF LAW

I

Appellant violated Section 9.04 of Regulation I by causing the discharge of particulate matter which became deposited upon the real property of others. The \$250 civil penalty assessed pursuant to Section 3.29 is reasonable in amount and should be affirmed. In view of appellant's good faith efforts to comply with the applicable regulations, however, we conclude that the penalty should be suspended.

II

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions, the Board enters this

ORDER

The \$250 civil penalty is affirmed, provided, however, that the entire civil penalty is suspended on condition that appellant not violate


FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 respondent's regulations for a period of six months from the date of  
2 this Order.

3 DATED this 18<sup>th</sup> day of January, 1978.

4 POLLUTION CONTROL HEARINGS BOARD

5   
6 DAVE J. MOONEY, Member

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8 CHRIS SMITH, Member  
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26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER